

SERVICE DATE – OCTOBER 7, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 295 (Sub-No. 7X)

THE INDIANA RAIL ROAD COMPANY—ABANDONMENT EXEMPTION—
IN MARTIN AND LAWRENCE COUNTIES, IND.

Decided: October 6, 2010

By decision and notice of interim trail use or abandonment (NITU) served on March 26, 2010 (March 2010 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903, the abandonment by The Indiana Rail Road Company (INRD) of 22.80 miles of rail line in Martin and Lawrence Counties, Ind. The line is comprised of a 21.15-mile line of railroad extending from milepost 241.35 east of Crane, Ind., to milepost 262.50 in Bedford, Ind. (Crane-Bedford Line), and a track extending from the Crane-Bedford Line at approximately milepost 262.40 and proceeding in an open counter-clockwise loop (east-north-west-south) for approximately 1.65 miles. The exemption was subject to public use, historic preservation, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for either the Indiana Trails Fund, Inc. (ITF), or the Greenways Foundation, joined by the City of Bedford, Ind., to negotiate an interim trail use/rail banking agreement with INRD for the right-of-way involved in this proceeding.¹ The negotiating period under the NITU expired on September 22, 2010.

By letter filed on September 8, 2010, INRD and ITF jointly filed a request to extend the NITU negotiating period for an additional 180 days. INRD and ITF explain that the parties are still negotiating the terms of the trail use/rail banking agreement.

On September 22, 2010, Everett and June Patrick, landowners adjacent to the INRD rail bed, filed a protest requesting that the Board deny INRD's and ITF's joint request for extension of the NITU negotiating period. The landowners state that their land is bisected by the railroad, and that it would be a great disadvantage to have a trail existing on their property. The landowners' request will not be granted. Under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), the trail use program is voluntary and consensual between the railroad and the trail user. See *Citizens Against Rails to Trails v. STB*, 267 F.3d 1144 (D.C. Cir.

¹ The March 2010 decision also imposed a 180-day public use condition, which expired on September 22, 2010, and by statute may not be extended. In addition, the historic preservation condition imposed in the March 2010 decision has been removed by decision served on June 9, 2010. Further, the 3 environmental conditions imposed remain in effect, but are self-executing and are not a barrier to consummation by INRD of this abandonment.

2001); Rail Aban.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² An extension of the negotiating period here will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, an extension is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 94 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended until March 21, 2011.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Everett and June Patrick's request to deny the extension of the NITU negotiating period is denied.
2. INRD's and ITF's joint request to extend the NITU negotiating period is granted.
3. The negotiating period under the NITU is extended to March 21, 2011.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).